

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STANTON Q. SHELTON,)
)
Plaintiff,)
)
v.) No. 4:09CV747 RWS
)
CITY OF ST. LOUIS, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Stanton Shelton for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either

law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a civilly committed psychiatric patient, brings this action under 42 U.S.C. § 1983 and state law. Named as defendants are the City of St. Louis, Veera Reddy (Psychiatrist, Missouri Department of Mental Health), and William Eikerman (same). The complaint seeks monetary relief.

The allegations in the complaint are few and incoherent. Plaintiff alleges that defendants Reddy and Eikerman forced him to take Haldol against his will. Plaintiff further alleges that he was assaulted by another resident, who hit plaintiff in the eye and broke his leg.

Discussion

There are no allegations in the complaint pertaining to the City of St. Louis.

As a result, the complaint is frivolous as to this defendant.

The complaint is silent as to whether defendants Reddy or Eikerman are being sued in their official or individual capacities. Where a “complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims.” Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). “[N]either a State nor its officials acting in their official capacity are ‘persons’ under § 1983.” Id. As a result, the complaint fails to state a claim upon which relief can be granted.

Because the Court is dismissing plaintiff’s federal claims, the Court will dismiss plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(c).

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 26th day of May, 2009.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE